

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Status of Claims:

No claims are currently added or cancelled.

Claims 1, 6, 11-15 and 20 are currently being amended.

This amendment and reply amends claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claims remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-20 are pending in this application.

Indication of Allowable Subject Matter:

Applicants appreciate the indication of allowable subject matter made in the Office Action with respect to claims 17 and 19.

Claim Rejections – Written Description:

In the Office Action, claims 11-15 and 20 were rejected under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description requirement, for the reasons set forth on page 3 of the Office Action. In reply, claims 11-15 and 20 have been amended to recite a digital signal processor, whereby support for those amendments made be found on page 17, lines 16-21 of the specification.

Claim Rejections – Prior Art:

In the Office Action, claims 1-16, 18 and 20 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,349,217 to Honcharenko et al. This rejection is traversed for the reasons given below.

Independent claims 1, 6 and 11 now recite “rejecting, when it is determined by the parameter comparing unit that the measured parameter is lower than the stored first threshold value of the parameter, allocation of a wireless channel to said another wireless”

apparatus, irrespective as to whether or not communication is actually done under the second modulation method". Support for these features made by found on page 14, lines 8-16 of the specification.

Referring to column 3 of Honcharenko, a communication method of the smaller multi-value number (QPSK) and a communication method of the larger multi-value number (QAM) are described, and it is suggested that selection is performed between these communication methods based on the S/I ratio (see column 3, lines 35-41). With regard to the adaptive modulation, however, Honcharenko fails to disclose or suggest rejecting, when it is determined by the parameter comparing unit that the measured parameter is lower than the stored first threshold value of the parameter, allocation of a wireless channel to said another wireless apparatus, irrespective as to whether or not communication is actually done under the second modulation method. More particularly, the present invention is directed to determining in advance whether the environment is the one where the communication is possible under the communication method of the larger multi-value number, irrespective of in which communication method communication is initially carried out, and rejecting the connection if the condition is not satisfied. Such features are not taught or suggested Honcharenko.

Accordingly, the presently pending claims under rejection are patentable over the disclosure of Honcharenko et al.

Conclusion:

Since all of the issues raised in the Office Action have been addressed in this Amendment and Reply, Applicants believe that the present application is now in condition for allowance, and an early indication of allowance is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a

check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date October 15, 2008

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5485
Facsimile: (202) 672-5399

By Phillip J. Articola

William T. Ellis
Registration No. 26,874
Phillip J. Articola
Registration No. 38,819